

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL	:	MDL
LEAGUE PLAYERS' CONCUSSION	:	
INJURY LITIGATION	:	
	:	
	:	NO. 2012-2323

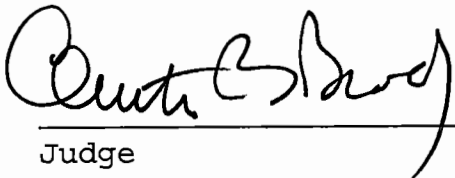
O R D E R

AND NOW, this 16th day of May, 2018, it is Ordered that the attached hard copy of attorney Christopher Seeger's power-point presentation from the 05-15-2018 hearing is made a part of the record.

ATTEST:

or BY THE COURT

BY: _____
Deputy Clerk



Judge

Civ 12 (9/83)

NFL CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)

Hearing on Fee Allocation

May 15, 2018

Co-Lead Class Counsel Christopher A. Seeger

LITIGATION OVERVIEW & BACKGROUND

MDL Formed in 2012

Unique & Challenging Claims

- Complex & Evolving Science
- Significant Legal Issues – Preemption
- Substantial Alternative Causation & Other Trial Defenses
- Statute of Limitations Issues

Novel Litigation Course

- Early Stay on Discovery
- Litigation of Motions to Dismiss
- Circumstances Dictated Consideration of Early Resolution

SETTLEMENT

Extensive Negotiations

Months of Pre-Term Sheet Negotiations – Mediator Driven & Private

Term Sheet – August 29, 2013

Two Rounds of Settlement Negotiations after Initial Term Sheet

Preliminary Approval – July 7, 2014

Final Approval – April 22, 2015

Third Circuit Affirms Approval – April 18, 2016

United States Supreme Court Denies Cert Petitions – December 19, 2016

INNOVATIVE SETTLEMENT FRAMEWORK

Faced the Challenges of *Amchem* and *Ortiz* for Classwide Settlement of Personal Injury Claims

- Uncapped Fund Addresses Major *Amchem* Concern
- Monetary Awards Keyed to Seasons (proxy for exposure) and Age at Diagnosis (tied to background rates)

The BAP Program Is More than a Medical Monitoring Program

- Created Our Own HMO for the Concussion Settlement
- Extensive Neuropsychiatric Assessment Designed by Experts in the Field
- Catches Impairment Early - Healthcare Professionals Can Act to Slow Degeneration
- Source of Information for Future Medical Research

65-Year MAF Program

- Substantial Monetary Awards
- Provides Significant “Insurance” for Younger Retired Players

Lien Resolution with Substantial Discounts

ASSEMBLED A TEAM OF EXPERIENCED CLASS ACTION ATTORNEYS

Prof. Samuel Issacharoff

- Bonnie and Richard Reiss Professor of Constitutional Law, NYU
- Nationally Renowned Expert on Class Actions - *VW Clean Diesel*, *BP Oil Spill*
- Argued Before 3rd Circuit – *DB Investments*, *Diet Drugs*, and *Avandia*

Arnold Levin (Sub-Class One Counsel)

- Lead Counsel in the *Diet Drugs Litigation* and *Chinese-Manufactured Drywall*
- Leadership in *In re CertainTeed (Shingles)*, *In re TMI*, and *Asbestos School Litig.*

Dianne Nast (Sub-Class Two Counsel)

- Lead Counsel in *Generic Pharm. Pricing*, *Augmentin Antitr.*, and *Paxil Antitr.*
- Leadership in the *Diet Drugs Litigation*, *Lipitor Antitr.*, and *Skelaxin Antitr.*

INNOVATIVE SETTLEMENT FRAMEWORK

“The performance of Class Counsel regarding this complex Settlement Agreement has been extraordinary. . . . Perhaps the strongest factor weighing in favor of the acceptance of Class Counsel’s fee request is the final factor that takes into account ***the innovative terms*** of this Settlement Agreement. ... Without ***these innovative terms***, a settlement might not have been possible under current Supreme Court precedent. This factor weighs heavily in Class Counsel’s favor.”

2018 WL 1635648, at * 7, 8 (E.D. Pa. April 5, 2018)

“This settlement will provide nearly \$1 billion in value to the class of retired players. It is a testament to the players, researchers, and advocates who have worked to expose the true human costs of a sport so many love.”

821 F.3d 410, 447-48 (3d Cir. 2016)

SETTLEMENT PARTICIPATION

Substantial Efforts to Ensure Broad Participation

- Town-Hall Meetings at NFL and Alumni Events
- Ongoing Television and Radio Interviews
- Conference Calls with Hundreds of Players
- Targeting of Key Media Markets in Advance of Registration

The Result: Unprecedented Class Member Participation

20,497 Total Registrations

- 15,982 Retired NFL Football Players
- 3,285 Representative Claimants

Extremely High Participation Rates

THE SETTLEMENT: FIRST YEAR RESULTS

Monetary Awards

- 411 MAF Notices Totaling Over \$423 million
- Awards Exceed Projected Claim Value for the First 10 years

BAP Examinations

- 12,755 Retired NFL Football Players Are Eligible for BAP Exams
- 4,077 Retired NFL Football Players Currently Scheduled or Scheduling
- 2,422 Retired NFL Football Players with Reports from At Least One Examination
- The Examinations Have Identified Qualifying Diagnoses in Several Men
 - ❖ 18 Level 1 Neurocognitive Impairment
 - ❖ 28 Level 1.5 Neurocognitive Impairment
 - ❖ 16 Level 2 Neurocognitive Impairment

THE SETTLEMENT: FIRST YEAR RESULTS

Protection of Settlement Class From Predatory Practices

- Stopping Misrepresentations
- Litigation Funding Abuses

Advocacy for Favorable Interpretations and Procedures

- Unrepresented Players Can Navigate Registration and Claims
- Definition of “Generally Consistent”
- Definition of “Eligible Season”
- “Downgrading of Claims”
- 88 Plan

Support of Players and their Counsel

- Engagement with Hundreds of Players and their Counsel
- Support at Every Stage – From Registration to Monetary Awards

COMMON BENEFIT FEES & COSTS

Seeger Weiss Collected Common Benefit Time and Expenses

- Solicited Time from All Firms Appearing in MDL
- Review and Audit of Time and Expenses Submitted
- CMO-5 Common Benefit Considerations

Time and Expenses Submitted for 24 Firms

- Declarations from Each Firm Presented with the Fee Petition
- Total Submitted Lodestar: \$40,559,978.60 (51,068 hours)
- Total Submitted Expenses: \$5,682,779.38

Court-Approved Fee Petition

- \$112.5 million for fees, costs, and incentive awards
- Decision on the 5% Holdback Reserved

ALLOCATION OF ATTORNEYS FEES AMONG COUNSEL

Court Directed Recommendations

- Co-Lead Class Counsel Directed All Common Benefit Work
- Knew Firsthand the Value of Each Firm's Contributions
- Request for Proposal from Lead Counsel is Common. *In re: IPO*

Co-Lead Class Counsel Reviewed Time Submissions and Declarations from Each Firm

Considered Three Key Criteria:

1. Appointed Role in Litigation
2. Value of Engagement in the Litigation
3. Contributions to the Settlement

ALLOCATION OF ATTORNEYS' FEES AMONG COUNSEL

Proposed Multipliers Range from .75 to 3.885

Brian Fitzpatrick: "The net result of the adjustment made by lead class counsel in this case left the original lodestars of the firms here with adjustments over a range of multipliers from 0.75 to 3.885. This is a spread of 1:5.2. Not only is this spread reasonable, but it is more equitable than the spreads in other cases of which I am aware."

In re: TFT-LCD – Range of .1 to 5.45 for Spread of 1:54.5

In re: Vitamins Antitr. – Range of 2.25 to 26 for a Spread of 1:11.6

ALLOCATION OF ATTORNEYS' FEES AMONG COUNSEL: FOUR PROPOSED TIERS

High Tier – More than a Multiplier of Two

- Leaders That Devoted Substantial Efforts to Securing and Defending the Settlement

Mid Tier - Over Lodestar, But a Multiplier Less than Two

- Notable Contributions to the MDL
- Typically with Leadership Appointment

Straight Lodestar

Negative Multiplier

AVAILABLE FUNDS (as of May 10, 2018)

Original QSF Balance:	\$112,500,000.00
• Interest Earned:	\$1,261,652.94
• Fees and Taxes:	(\$495,933.14)
• Court Approved Expenses:	(\$5,682,779.38)
• Incentive Awards:	(\$300,000.00)
• Dennis Suplee (to April):	(\$208,290.50)
• Available Balance:	\$107,074,649.92
Escrow Funds:	<u>\$1,368,050.20</u>
Total Available Funds:	\$108,442,700.12